



# THE ROLE OF INTERNATIONAL ORGANISATIONS IN THE DEVELOPMENT OF INTERNATIONAL LAW: AN ANALYTICAL ASSESSMENT OF THE UNITED NATIONS

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## ABSTRACT

International organisations play a vital role in shaping and implementing international norms and standards, contributing to the development of international law. This paper focuses on the United Nations (UN) as a prominent international organisation and examines its role in developing and implementing international law. Specialized entities within the UN, such as the International Court of Justice (ICJ), the United Nations General Assembly (UNGA), and the International Law Commission (ILC), have played significant roles in the development, codification, and implementation of international law. The UN serves as a platform for ongoing dialogue, identifies emerging challenges, formulates international legal and policy instruments, provides mechanisms for peaceful settlement of disputes, and collaborates with other international and regional organisations. However, this paper also acknowledges the inherent challenges and shortcomings of the UN and explores proposals for UN reform to address these issues, enhance its influence, and better fulfil its overarching purpose. Through an analytical assessment of the UN's role and influence on international law, this paper aims to provide insights into the functioning of international organisations and their impact on shaping global legal norms.

## INTRODUCTION

International organisations play an important role in shaping international norms and standards,<sup>1</sup> addressing issues that transcend national boundaries and promoting collective solutions on the global stage.<sup>2</sup> These organisations are established by states through multilateral treaties, acquire distinct wills separate from their member states,<sup>3</sup> and derive their competence from the treaties that establish them.<sup>4</sup> While subject to domestic laws, they also possess legal personality within the jurisdictions they are headquartered.<sup>5</sup>

The increasing number of international organisations reflects states' recognition of the importance of interdependence and collaboration in addressing global challenges through the establishment of international standards.<sup>6</sup> There are approximately 250 to 350 international organisations exercising public authority through legislative and

regulatory actions,<sup>7</sup> adopting various decisions.<sup>8</sup> International organisations can be universal or regional in scope, representing groups of countries or institutions that share similar values, cultures or objectives. They may also be members of other international organisations.<sup>9</sup>

This paper provides a concise analysis of the historical development of international organisations and their impact on the development and implementation of international law. It explores the functioning of these organisations in the realm of public international law, which encompasses the regulation of state relations as well as the behaviour of individuals, corporations, and non-governmental organisations (NGOs). The primary focus is on the United Nations (UN) and its pivotal role within the international legal framework. The paper critically evaluates the contributions of specialized UN bodies, the UN General Assembly (UNGA), the International Law Commission (ILC), the International Court of Justice (ICJ), and the UN Security Council (UNSC) to the development, codification and implementation of international law. The paper also addresses the challenges faced by these bodies and proposes reforms for the UN to effectively address these challenges and enhance its functioning in promoting and upholding international law.

1 OECD, The Contribution of International Organisations to a Rule-Based International System: Key Results from the partnership of international organisations for effective rulemaking, 1 (10 April 2019). <https://www.oecd.org/gov/regulatory-policy/IO-Rule-Based%20System.pdf> [Last accessed: 12.09.2023].

2 *Ibid.*

3 Klabbers, J. (2015). Advanced Introduction to the Law of International Organizations, Edward Elgar, p. 7. See also p. 8-9.

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4 Chiu, H. (1965). Succession in International Organisations. *The International and Comparative Law Quarterly*, 14 (1), 91.

5 Amerasinghe, C.F. (2005). Principles of the Institutional Law of International Organizations. (2<sup>nd</sup> edition). (Cambridge University Press) 69-77.

6 For more information on statistics, see the latest issue of the Yearbook of International Organizations, which has been tracking the proliferation of IOs since the early 20th century. <https://uia.org/ybio/> [Last accessed: 12.07.2023]. See Davies & Woodward, 2014, cited in Fomerand, J. Evolution of International Organization as Institutional Forms and Historical Processes Since 1945: "Quis Custodiet ipsos custodies?". Oxford Research Encyclopedia of International Studies, 2. <https://oxfordre.com/internationalstudies/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-87> [Last accessed: 12.09.2023].

7 Mańko, R., EPRS, European Parliamentary Research Service, *Suspension and expulsion of states from international organisations Analysis of the Vienna Convention on the Law of Treaties and of the practice at the United Nations and the Council of Europe*, BRIEFING, European Parliament, PE 751.410 – July 2023,1 [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751410/EPRS\\_BRI\(2023\)751410\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751410/EPRS_BRI(2023)751410_EN.pdf) [Last accessed: 12.07.2023].

8 Bernstor, J. von. (2008) Procedures of Decision-Making and the Role of Law in International Organizations, *German Law Journal*, 9 1939.

9 See Mańko (n 7). Additionally, in the 9<sup>th</sup> edition of Brownlie's Principles of Public International Law by James Crawford (published on July 9, 2019, at 16), Crawford argues that there is no requirement for all international organizations to possess legal personality, contrary to the stance taken by the International Law Commission (ILC).

# 1. THE EVOLUTION OF INTERNATIONAL ORGANISATIONS: A BRIEF OVERVIEW

International organisations have been a long-standing presence in the field of international law. Although states have historically held primary responsibility within the realm of international law, governments are increasingly recognizing the potential benefits of ceding certain aspects of their sovereign authority to international Organisations committed to addressing global issues.<sup>10</sup> Since the mid-20th century, international organisations have gained international legal personalities and become significant subjects of international law, albeit with fewer rights and responsibilities than states.<sup>11</sup> This section will present an overview of the historical evolution of international organisations, tracing their development from temporary assemblies or conferences to permanent international organisations with enduring international legal frameworks.

In the late eighteenth and nineteenth centuries, several powers started to establish forms of cooperation that went beyond bilateral treaties and diplomatic efforts.<sup>12</sup> According to Klabbers, while traces of international organisations can be found in different historical periods, such as the ancient Greek “amphictyonic councils”, the late-medieval Hanseatic League, and early examples like the Swiss Confederation, it was not until the nineteenth century that international organisations resembling those we see today were formally established.<sup>13</sup> Klabbers also argues that the Congress of Vienna (1814-1815) holds significant importance in the realm of international relations. It marked the creation of a modern political and legal framework for Europe following a period of instability

characterized by upheaval and conflict after the French Revolution.<sup>14</sup> During this time, states began to recognize the inadequacy of the existing system in effectively addressing the emerging conflicts between them.<sup>15</sup>

Initially, the mandates of these organisations were limited and narrow in scope. The establishment of river commissions, like the European Commission of the Danube in 1856, indicates that the primary area requiring international cooperation was transportation and communication.<sup>16</sup> During this time, private individuals also took the initiative to create organisations with the goal of addressing global issues.<sup>17</sup> In the year 1840, the establishment of the World Anti-Slavery Convention took place,<sup>18</sup> while in 1863 the International Committee of the Red Cross<sup>19</sup> was established.<sup>20</sup>

International organisations also experienced significant growth in various domains beyond transportation and communications. For example, the establishment of the International Office of Public Health in 1903 focused on addressing health-related issues. Additionally, early precur-

10 Klabbers, J. (2002). The rise of international organizations. In *An Introduction to International Institutional Law*, 18. Cambridge: Cambridge University Press.

11 Grant, J. P. (2010) Subjects of International Law cited in *International Law Essentials*, Edinburgh University Press, 35.

12 See Klabbers (n 10) at 16. For more information on the development of the law of international organizations, see Klabbers, J. (2001). The Life and Times of the Law of International Organizations, 70 *Nordic Journal of International Law*, 287-317.

13 See Klabbers (n 10) at 16.

14 Lesaffer, R. C. H. (2015). The Congress of Vienna (1814-1815). Oxford University Press.

15 Reinalda, B. *From the Congress of Vienna to Present-Day International Organizations*, UN, <<https://www.un.org/en/chronicle/article/congress-vienna-present-day-international-organizations>> [Last accessed: 12.08.2023].

16 Later, there would also be an International Commission for the Danube, established by the 1919 Peace Treaties. See Klabbers, (n 10) at 16. See Reinalda (n 15).

17 See Klabbers, (n 10) at 18.

18 The English Quaker, Joseph Sturge was initially responsible for establishing the convention, “but in its origin, as well as in several other respects, this meeting represented a joint English and American undertaking”. According to Maynard, the convention initiated the movement toward international organisation, however it has been criticized for its exclusion of women. See Maynard, D. H. (1960). The World’s Anti-Slavery Convention of 1840. *The Mississippi Valley Historical Review*, 47(3), 452.

19 Established by a Swiss national Henry Dunant. The Committee had brought together government representatives “to agree on Dunant’s proposal for national relief societies, to help military medical services”. In 1864 the Committee persuaded governments to adopt the first Geneva Convention. See International Committee of the Red Cross (ICRC) “History” <<https://www.icrc.org/en/who-we-are/history>> [Last accessed: 12 September 2023].

20 Known as the International Committee of the Red Cross, See ICRC, Founding and early years of the ICRC (1863-1914) <<https://www.icrc.org/en/document/founding-and-early-years-icrc-1863-1914>> [Last accessed: 12.09.2023].

sors to contemporary international organisations in the field of economics emerged during this period, such as the Metric Union (1875), the International Copyright Union (1886), the International Sugar Union (1902), and the International Institute for Agriculture (1905).<sup>21</sup> Some of these institutions, albeit with altered names and based on distinct constituent agreements, continue to operate today. For instance, the International Institute for Agriculture now operates under the name FAO (Food and Agriculture Organization).<sup>22</sup>

According to Klabbers, public international law has undergone a gradual shift from being a “law of co-existence” to a “law of cooperation”, as demonstrated by the growing prevalence of international organisations.<sup>23</sup> This suggests that international organisations are evolving into mechanisms that foster cooperation among states, rather than solely defining and limiting their respective spheres of influence.<sup>24</sup> Max Huber, a renowned Swiss international lawyer, wrote in 1910 that states entered into treaties for two primary motives: the pursuit of self-interest and the pursuit of common or shared interests.<sup>25</sup>

However, the significant growth of international organisations occurred following the conclusion of the First World War.<sup>26</sup> The Treaty of Versailles was signed on June 28, 1919, marking the formal conclusion of World War I.<sup>27</sup> The League of Nations, established under the Treaty of Versailles on January 10, 1920, was the first international governmental organization with broad authority. Its primary purpose was to provide a platform for resolving conflicts between states. However, despite its establishment, the League of Nations did not gain widespread popularity, attracting only 63 member

states.<sup>28</sup> Ultimately, the organization was officially dissolved after the outbreak of World War II.

## 2. THE GROWTH AND INFLUENCE OF INTERNATIONAL ORGANISATIONS

Traditionally, international law has primarily focused on governing the relationships between states.<sup>29</sup> Oppenheim, who is considered the founder of modern international law, defined international law as “the body of customary and convention rules which are considered legally binding by civilized States in their intercourse with each other”.<sup>30</sup> He further noted that “international offices” are established to implement treaties that establish international unions.<sup>31</sup> Therefore, the priority of states extends over international organisations, as these organisations are “derivative creatures” that derive their existence and powers from the states that established them.<sup>32</sup> As correctly pointed out by Klabbers, “only states can go to war. Only states can conclude treaties. Only states can proclaim territorial waters”.<sup>33</sup>

In fact, it has been argued that international organisations were not intended to exert influence on the global community. When these organisations were first established, they were not granted international legal personality, as it was not deemed important or necessary.<sup>34</sup> International organisations were only intended to interact directly with member states “not with third states, not with other international organisations, and not with the citizens of their member states either”.<sup>35</sup>

21 See Klabbers (n 10) at 18.

22 *Ibid.*

23 *Ibid.*

24 *Ibid.*

25 *Ibid.*, at 19.

26 Some have argued that the League of Nations originated in 1815 Concert, which foresaw regular meetings of government representatives to discuss issues of conflict and peace. See Langhorne, R. (1990). Establishing International Organisations: The Concert and the League, 1 *Diplomacy & Statecraft*, 1-18. See Klabbers (n 10) at 19.

27 See Library of Congress, *Introduction – Treaty of Versailles: Primary Documents in American History – Research Guides*. <<https://guides.loc.gov/treaty-of-versailles>> [Last accessed: 12.09.2023].

28 See Grant, J. P. (2010). *International Law Essentials*. Edinburgh University Press. 36.

29 Klabbers, J. (2021). An Accidental Revolution: The ILO and the Opening Up of International Law. In: Halonen, T., Liukkunen, U. (eds) *International Labour Organization and Global Social Governance*. Springer, Cham., 125.

30 Oppenheim L. (1912) *International law: a treatise*, (2nd edition). Longmans, Green, London, 3.

31 *Ibid.*

32 *Ibid.*

33 See Klabbers J. (2015). The EJIL foreword: the transformation of international organizations law. 26(1), *The European Journal of International Law*, 9–82, 126, cited in (Klabbers n 29).

34 Cited in Klabbers, (n 29) 126.

35 International Court of Justice, *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory



Prior to the intervention of the ICJ in 1949, international organisations lacked international legal personality.<sup>36</sup> Within a decade of the 1949 ICJ advisory ruling there has been a complete change in the position.<sup>37</sup> For example, the charters of international organisations now contain clauses conferring legal personality or some measure thereof,<sup>38</sup> and various regional instruments, contain general provisions recognising the legal personality of international organisations.<sup>39</sup>

According to Alvares, the expansion and influence of international organisations on international law and policymaking has for example, aided in the formulation, promotion of treaties and conventions and their implementation by states.<sup>40</sup> They play a dual role in the process of shaping global norms and rules: they participate as unique actors in decision-making and provide the essential structures of authority for other participants.<sup>41</sup> As subjects of international law, international organisations are also governed by *Jus cogens* norms, customary international law, and general principles of law.<sup>42</sup> As we progress through this section, it

will become clear that international organisations, particularly the UN, have significantly influenced the sources of international obligations, and the key actors involved in international law-making.

International organisations have had a significant impact on the development of international law,<sup>43</sup> effectively contributing to the establishment of a global constitutional system.<sup>44</sup> According to Henkin, international organisations “represent new laws at its birth, for it is itself a child of law”.<sup>45</sup> For instance, the Charter of the United Nations (UN) and its specialized agencies and other international organisations have played a crucial role in shaping international law. The World Health Organization (WHO), the Organisation for Economic Co-operation and Development (OECD), and the International Labour Organization (ILO) are among the organisations that have contributed to the significant transformation of international law’s sources, actors, and processes over the past century.<sup>46</sup>

### 3. THE UNITED NATIONS AND THE DEVELOPMENT OF INTERNATIONAL LAW

On June 26, 1945, the United Nations (UN) Charter was adopted at the conclusion of the United Nations Conference on International Organizations in San Francisco. The Charter serves as a codification of major principles governing international relations, ranging from “sovereign equality of States to the prohibition of the use of force in international relations”.<sup>47</sup> The primary missions of the UN is to maintain peace and security, promote economic and social development, uphold human

Opinion, 11 April 1949. In International Court of Justice Reports of Judgments, Advisory Opinions and Orders 1949. Cited in Klabbbers, (n 29) 126.

36 See, for example, the uncertainties of the position in 1945. See Jenks, C. W. (1945). The Legal Personality of International Organisations, *British Yearbook of International Law*. Vol. XXII, pp. 267-275. International Court of Justice, *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 11 April 1949. In International Court of Justice Reports of Judgments, Advisory Opinions and Orders 1949. Cited in Klabbbers (n 29) at 126.

37 Jenks, C. W., Bentwich, N., Keen, F. N., Pollard, R. S. W., Lloyd, P. C., Stark, B., Chatterjee, Lady, Adamkiewicz, W., Elkin, A. B., Zaslowski, E., & Piercy, A. (1951). The Impact of International Organisations on Public and Private International Law. *Transactions of the Grotius Society*, 37, 47.

38 See, for example, UNGA, Convention on the Privileges and Immunities of the Specialized Agencies, 21 November 1947. and UNGA, Convention on the Privileges and Immunities of the United Nations, New York, 13 February 1946.

39 See Alvarez, J. E. (2006). International Organizations: Then and Now. *The American Journal of International Law*, 100(2), 326.

40 For more information on this, see Alvarez (n 39).

41 Chen, L. (2015) An Introduction to Contemporary International Law: A Policy-Oriented Perspective 3rd Ed. Books, 61.

42 Daugirdas, K. (2016). How and Why International Law Binds International Organizations. *Harvard International Law Journal*. J. 57, no. 2, 381.

43 Henkin, L. (1969). International Organization and the Rule of Law. *International Organization*, 23(3), 657.

44 Weller, M. (2009) “The struggle for an international constitutional order”, in David Armstrong, Routledge Handbook of International Law (London and New York: Routledge), pp. 179-94, cited in Armstrong, D. (2011). Evolving conceptions of justice in international law. *Review of International Studies*, 37(5), 2133.

45 See Henkin (n 43).

46 Alvarez, J. E. (2018). The Legitimacy of IO Rule-Making. *Proceedings of the Annual Meeting (American Society of International Law)*, 112, 275.

47 UN Charter, <<https://www.un.org/en/about-us/un-charter#:~:text=The%20UN%20Charter%20codifies%20the,of%20force%20in%20international%20relations>> [Last accessed: 12.09.2023].

rights, and provide platforms for state dialogue.<sup>48</sup> The UN Charter, comprising 111 articles including the preamble, outlines the rights and responsibilities of member states. It also delineates the roles and responsibilities of the UN's six principal bodies.<sup>49</sup> The Charter emphasizes the importance of peaceful settlement of international disputes and grants authority to the Security Council (UNSC) to uphold international peace and security.<sup>50</sup>

Since its establishment with an initial membership of fifty-one states,<sup>51</sup> the UN has undergone significant development, becoming a diverse and multidimensional global institution with a current membership of 193 nations.<sup>52</sup> The UN has positioned itself as a global constitutional organisation, striving to safeguard and uphold an optimal world order.<sup>53</sup> Article 103 of the UN Charter exemplifies this aim by stipulating that in case of a conflict between member states' obligations under the Charter and any other international agreement, the obligations under the Charter "shall prevail".<sup>54</sup>

Numerous experts in international law recognize the UN as a crucial international organisation for the maintenance of peace and security.<sup>55</sup>

The UN Charter's fundamental principles and its evolution, including amendments made in 1963, 1965, and 1973,<sup>56</sup> have had a profound impact on the codification and progressive development of international law. The ICJ plays a crucial role in providing a platform for peaceful dispute settlement, interpreting treaties, and offering advisory opinions. The UNSC is also instrumental in the maintenance of international peace and security. The opinions of qualified commentators and the work of the International Law Commission (ILC) further contribute significantly to the ongoing development of international law. In addition to the work of the United Nations General Assembly (UNGA), which we will examine further in the following section. These various components collectively shape and promote the principles and regulations governing the international community.

Research indicates that the current composition of the UNSC, which bears the primary responsibility for upholding international peace and security, is considered anarchic and presents an inadequate representation of the global community.<sup>57</sup> Additionally, the Council's ability to take decisive legal action during crises is often hindered by political agendas and national priorities among the five permanent member states (P5), thereby impeding the adoption of legally binding resolutions to address international conflicts. For example, one study highlights the Council's inability to effectively respond or intervene in ongoing global conflicts and crises, such as the Russian annexation of Crimea and war with

48 Ferreira-Snyman, A. (2011). Regionalism and the restructuring of the United Nations with specific reference to the African Union. *The Comparative and International Law Journal of Southern Africa*, 44(3), 360.

49 These are the General Assembly, the Security Council, the Economic and Social Council, Trusteeship Council. International Court of Justice and the Secretariat.

50 Art. 23, stipulates that there are only five permanent members of the Security Council (P5 members of the SC): The Republic of China (now the People's Republic of China), France, USSR (now Russia), the United Kingdom, and the United States), this listing of only five states with Veto powers prevents the Security council from taking effective measures to end many current international conflicts. Klabbers, J. (2002). *The Rise of International Organizations*. In *An Introduction to International Institutional Law*, 21. Cambridge: Cambridge University Press.

51 Saudi Arabia was admitted to the UN as a core member of the UN on October 24, 1945. See UN, Member States <https://www.un.org/en/about-us/member-states#gotoS> [Last accessed: 12.09.2023].

52 Ferreira-Snyman, A. (2011). Regionalism and the restructuring of the United Nations with specific reference to the African Union. *The Comparative and International Law Journal of Southern Africa*, 44(3), 360.

53 See Chen, L. (2015) *An Introduction to Contemporary International Law: A Policy-Oriented Perspective* 3rd Ed. Books, 61. See also Macdonald, Ronald St. J. The Charter of the United Nations as a world constitution. In: *International law across the spectrum of conflict: essays in honour of Professor L. C. Green on the occasion of his eightieth birthday* (Newport, R.I.: Naval War College, 2000), 263-293.

54 UNGA, Charter of the United Nations, 24 October 1945, 1

UNTS XVI.

55 Quizhi, He. (1995) *The Crucial Role of the United Nations in Maintaining International Peace and Security*, in Tomuschat, C (ed.), *The United Nations at Age Fifty, A Legal Perspective* (The Hague: Kluwer Law International), 77. See Macdonald (n 53) at 290-91.

56 Macdonald (n 53) 291.

57 For more information on the roles and responsibilities of the Security Council, see Chapters VI, VII, VIII, and XII of the UN Charter. See also a list of UN SC resolutions, See UN, *Resolutions* <https://www.un.org/securitycouncil/content/resolutions-0> for example, Malik, J. M. (2005). Security Council Reform: China Signals Its Veto. *World Policy Journal*, 22(1), 19-29; Council on Foreign Relations, *The UN Security Council*, February 28, 2023. <https://www.cfr.org/background/un-security-council> [Last accessed: 12 July 2023].

Ukraine.<sup>58</sup> It has been demonstrated that the UNSC's ambiguous and discretionary powers are prone to abuse, resulting in violations of fundamental rights of individuals and states.<sup>59</sup>

As a result, some scholars oppose the UN Charter's recognition as a global constitution.<sup>60</sup> Rao, for instance, emphasizes that "the United Nations has not been conceived as a world government, nor could transform itself into one".<sup>61</sup> The inability of UN bodies to effectively impose their decisions on members and the absence of any judicial review mechanism for their unlawful actions are almost universally regarded as significant constitutional issues.<sup>62</sup> In a similar stand, Tomuschat argues that "the Charter is nothing more than the constitution of the international community [...]. unrivalled by any other international instrument".<sup>63</sup>

Furthermore, the UN Charter is often described as a "rigid" constitution, which has led to a limited number of amendments since its establishment. The only amendments to date were the expansion of the UNSC in 1965 and the expansions of the United Nations Economic and Social Council (ECOSOC) in 1970<sup>64</sup> and 1971.<sup>65</sup> The complexity of the procedure is detailed in Article 108, which requires a "a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two-thirds of the Members

of the United Nations, including all the permanent members of the Security Council".<sup>66</sup> This provision contributes to the difficulty of amending the UN Charter. As such, when a single permanent member exercises its veto power, the amendment procedure is effectively impeded or blocked.<sup>67</sup>

However, there have been calls for the reform of the UNSC, suggesting a need for its amendment.<sup>68</sup> Proposals to amend the UN Charter, particularly those related to expanding the UNSC permanent state membership, encounter significant obstacles due to the absence of unanimous agreement among the P5 member states. Notably, the United States, the Russian Federation, and China have yet to reach a consensus on this issue.<sup>69</sup> These nations express reservations about the potential risks associated with both expanding the Council's membership and maintaining the current state, as they believe it could impact the stability of the UN.<sup>70</sup> Nevertheless, it is vital to reform the UNSC to enhance its legitimacy and effectiveness. It is also the entity responsible for upholding international peace and security. Broadening the Council's composition could contribute to strengthening its authority, particularly considering that it has remained unaltered since 1965, despite substantial changes in the international landscape.<sup>71</sup>

Notwithstanding its limitations, the UN Charter has garnered support from numerous experts in the field of international law. Macdonald, for instance, described it the "the most comprehensive framework of cooperation in the history of interna-

58 Council on Foreign Relations, *The UN Security Council*, February 28, 2023. <<https://www.cfr.org/background/un-security-council>> [Last accessed: 12.09.2023].

59 Lamb, S. (1999). Legal Limits to United Nations Security Council Powers, in Guy S. Goodwin-Gill, and Stefan Talmon (eds), *The Reality of International Law: Essays in Honour of Ian Brownlie*, Oxford, online edn, Oxford Academic, 22 Mar. 2012), 361.

60 See Macdonald (n 53) 292.

61 Pemmaraju, S Rao, (1995). The United Nations and International Peace and Security: An Indian Perspective: in Tomuschat, C. (1995) *The United Nations at Age Fifty – A Legal Perspective* (Kluwer Law International) The Hague, 182, cited Macdonald (n 53) at 292.

62 *Ibid.*

63 Tomuschat, C. (1995). *The United Nations at Age Fifty, A Legal Perspective* (The Hague: Kluwer Law International 1 United Nations Security Council) ix.

64 GA Res. 1991A (XVIII) (Dec. 17, 1963) (Security Council enlargement); GA Res. 1991B (XVIII) (Dec. 17, 1963) (first enlargement of Economic and Social Council).

65 GA Res. 2847 (XXVI) (Dec. 20, 1971). See Robinson, J. Metamorphosis of the United Nations Charter, in 94 *Recueil Des Cours* 493, 547(1958 II), cited in Blum, Y. Z. (2005). Proposals for UN Security Council Reform. *The American Journal of International Law*, 99(3), 648.

66 See UN Charter, Article 108.

67 Blum, Y. Z. (2005). Proposals for UN Security Council Reform. *The American Journal of International Law*, 99(3), 648.

68 Lamb, S. (1999). Legal Limits to United Nations Security Council Powers, in Guy S. Goodwin-Gill, and Stefan Talmon (eds), *The Reality of International Law: Essays in Honour of Ian Brownlie* (Oxford, 1999; online edn, Oxford Academic, 22 Mar. 2012), 361; Blum, Y. Z. (2005). Proposals for UN Security Council Reform. *The American Journal of International Law*, 99(3), 632-649; Malik, J. M. (2005). Security Council Reform: China Signals Its Veto. *World Policy Journal*, 22(1), 19-29.

69 Martini, E. (2009). UN Security Council reform. Current developments, Working Paper No. 0926, Istituto Affari Internazionali, 9. See also Sarwar, N. (2011). Expansion of the United Nations Security Council. *Strategic Studies*, 31(3), 257-279.

70 *Ibid.*

71 Sarwar, N. (2011). Expansion of the United Nations Security Council. *Strategic Studies*, 31(3), 257.

tional relations".<sup>72</sup> The Charter's primary objective is to establish a permanent platform for peaceful resolutions and multilateral diplomacy, making it the only comprehensive international Charter.<sup>73</sup> Furthermore, the UN has played a significant role in setting international human rights norms and standards. This is evident through the inclusion of human rights references in the UN Charter,<sup>74</sup> as well as the adoption of resolutions, declarations, multilateral human rights treaties, and monitoring mechanisms aimed at promoting and monitoring human rights situations in member states. Additionally, the UN Charter supports the development of regional organisations to complement the work of the UN. Chapter VIII of the Charter, specifically Articles 52-54, provides the constitutional basis for the participation of regional organisations, alongside the Security Council, in maintaining international peace and security.<sup>75</sup>

### 3.1. The Role of UN Specialized Bodies

As this study indicates, the UN possesses specialized technical bodies that play a crucial role in the negotiation and adoption of legally binding instruments, such as treaties, conventions, agreements, and directives.<sup>76</sup> The majority of international treaties and conventions established by the UN incorporate monitoring mechanisms to ensure the implementation of the respective legal instruments. These mechanisms often include reporting requirements for the parties involved and generate conclusions and/or recommendations from the monitoring bodies.<sup>77</sup>

For example, within the framework of the Universal Periodic Review (UPR), the UN Human Rights Council (HRC), an intergovernmental organisation established by the UN General Assembly (UNGA) through resolution 60/251<sup>78</sup> on March 15, 2006, examines the human rights records of all 193 UN Member States.<sup>79</sup> These processes possess investigative or quasi-judicial characteristics, such as the HRC's special procedures for addressing human rights situations or violations, as well as the communications procedures of UN human rights treaty bodies.<sup>80</sup> The HRC holds significant importance as an intergovernmental organisation as it has created a public platform for the discussion of contentious human rights issues, involving the participation of States and human rights non-governmental organisations (NGOs).<sup>81</sup> While the conclusions and recommendations of the HRC and other international human rights treaty bodies are not legally binding, they exert a substantial influence on shaping and promoting international human rights norms and standards.<sup>82</sup>

As such, according to Higgins the HRC "has championed the protection of human rights defenders and tackled human rights situations at the national level".<sup>83</sup> By actively promoting international human rights standards, the HRC can be seen as a critical element of the international legal system. Its efforts contribute to the development, enforcement, and promotion of human rights principles globally.<sup>84</sup>

72 See Macdonald (n 53) at 293.

73 Jenks, C W, (1962). *The Proper Law of International Organizations* (London: Stevens), 257.

74 In fact, the term "human rights" was mentioned seven times, see UN Preamble and Arts. 1, 13, 55, 62, 68, 76 of the UN Charter.

75 UN SC, *Regional Arrangements* (Chapter VIII of UN Charter) <https://www.un.org/securitycouncil/content/regional-arrangements-chapter-viii-un-charter#:~:text=Chapter%20VIII%20of%20the%20Charter,Security%20Council%20is%20primarily%20responsible> [Last accessed: 12.09.2023].

76 Prieto Ramos, F. (2014) International and supranational law in translation: from multilingual lawmaking to adjudication, *The Translator*, 20:3,315.

77 *Ibid.*

78 Membership to the council includes only 47 Member States elected by the majority of members of the UNGA by a secret ballot. See OHCHR, *Membership of the Human Rights Council* <https://www.ohchr.org/en/hr-bodies/hrc/membership> [Last accessed: 12.09.2023]., Replacing the Commission on Human Rights, see OHCHR, *The Human Rights Council*, <https://www.ohchr.org/en/hr-bodies/hrc/about-council> [Last accessed: 12.09.2023].

79 See UN. UPR. <https://www.ohchr.org/en/hr-bodies/upr/upr-home> [Last accessed: 12.09.2023].

80 See, for example, OHCHR. *The role of the High Commissioner for Human Rights* <https://www.ohchr.org/en/about-us/high-commissioner> and OHCHR, *Universal Periodic Review*, <https://www.ohchr.org/en/hr-bodies/upr/upr-home> [Last accessed: 12.09.2023].

81 Higgins, R. (2016). The United Nations At 70 Years: The Impact Upon International Law, *The International and Comparative Law Quarterly* 65, no. 1, 10.

82 *Ibid.*

83 *Ibid.*

84 Saudi Arabia has been a prominent member of the HRC since its establishment from 2006 to 2019. See OHCHR,



In the following section, we will explore how the ICJ, as the primary judicial organ of the UN, interprets international law. This includes its recognition of the legal validity of United Nations declarations and treaties. We will also discuss some of the challenges that the ICJ encounters in its work.

### 3.2. The Role of International Adjudications

O'Connell and VanderZee assert that courts and tribunals have played a significant role in international law since the mid-seventeenth century, coinciding with the emergence of modern international law and the establishment of the state system.<sup>85</sup> During this period, these judicial bodies were primarily immersed in theoretical debates concerning the nature of international law. While arbitration held initial prominence, there was a gradual rise in support for the creation of courts endowed with general compulsory jurisdiction.<sup>86</sup>

As the late twentieth century approached, there was a noticeable shift towards the emergence of courts specializing in specific subject matters such as human rights, trade, the law of the sea, and international criminal justice. Diverging from the International Court of Justice (ICJ), these specialized courts have proliferated, resulting in a broad and mandatory jurisdiction within their respective specialized domains.<sup>87</sup> Nevertheless, as this section aims to demonstrate, the ICJ has not succeeded in evolving into a hierarchical judicial system and this could potentially contribute to fragmentation, ultimately weakening the perception of international law as a unified system.<sup>88</sup> However, as this section unfolds, it will reveal that despite its institutional shortcomings, the ICJ has exerted a significant influence on the development of international law.

Alford argues that the influence of international courts and tribunals as a source of international

law is a crucial aspect to consider when examining the expansion of these mechanisms.<sup>89</sup> These courts and tribunals regularly issue rulings that serve as foundations for international law<sup>90</sup> and are well-equipped to handle disputes that may arise due to the expanding scope of international law.<sup>91</sup> According to Alvarez, the most substantial body of emerging “soft law” consists of a growing volume of rulings rendered by permanent international courts and tribunals.<sup>92</sup> The UNSC, for example, has established interim criminal tribunals such as: the International Criminal Tribunal for the former Yugoslavia (ICTY)<sup>93</sup> and the International Criminal Tribunal for Rwanda (ICTR)<sup>94</sup> to prosecute those involved in war crimes and serious violations of international humanitarian law. The UN has also collaborated with the Special Court for Sierra Leone (SCSL), the Extraordinary Chambers in the Courts of Cambodia (ECCC), and others, such as regional human rights courts and the International Criminal Court (ICC) employing diverse approaches and strategies.<sup>95</sup>

At this juncture, it is crucial to emphasize the significance of the ICJ and its influence on the development of international law. In 1922, the League of Nations was instrumental in the formation of the first world court, the predecessor of the ICJ, the Permanent Court of International Justice (PCIJ).<sup>96</sup>

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List of past members of the Human Rights Council <<https://www.ohchr.org/en/hr-bodies/hrc/past-members>> [Last accessed: 12.09.2023].

85 O'Connell, M. E., & VanderZee, L. (2014). The History of International Adjudication. *The Oxford Handbook of International Adjudication*, 41.

86 *Ibid.*

87 *Ibid.*

88 *Ibid.*

89 Alford, R. (2000). The Proliferation of International Courts and Tribunals: International Adjudication in Ascendancy. 94, *American Society of International Law Proceedings*, 160.

90 *Ibid.*

91 See Higgins (n 81).

92 See Alvarez (n 39) at 329.

93 UN Security Council, Security Council resolution 827 (1993) [International Criminal Tribunal for the former Yugoslavia (ICTY)]., 25 May 1993, S/RES/827 (1993); See UN, International Criminal Tribunal for the former Yugoslavia, <<https://www.icty.org/>> [Last accessed: 12.09.2023].

94 UN Security Council, Security Council resolution 955 (1994) [Establishment of the International Criminal Tribunal for Rwanda]., 8 November 1994, S/RES/955 (1994); See UN, International Criminal Tribunal for Rwanda, <<https://unictr.irmct.org/>> [Last accessed: 12.09.2023].

95 UN Library, *UN International Law Documentation* <<https://research.un.org/en/docs/law/courts>> [Last accessed: 12 September 2023]. See Higgins (n 81) at 16. See Alford (n 89) at 160.

96 Article 14 of the Covenant of the League of Nations gave the Council of the League responsibility for formulating plans for the establishment of a Permanent Court of International Justice (PCIJ). See ICJ, History, <<https://www.icj-cij.org/history>> [Last accessed: 12 September

It played an important part in interpreting international treaties and solving disputes between states. During its brief existence, the court adjudicated 66 cases between 1922 and 1940, including 39 contentious cases and 27 advisory opinions.<sup>97</sup> In addition to resolving specific disputes, the PCIJ established a respected corpus of law.<sup>98</sup> Its successor, the ICJ and other courts continue to cite a number of its decisions.<sup>99</sup>

Kelsen, a leading Western scholar of jurisprudence, expressed his criticism towards the institutional structure of the LoN.<sup>100</sup> He argued that the PCIJ should have held a central position within the organisation, rather than the League Council or Assembly. According to Kelsen, this court should have possessed compulsory jurisdiction and been composed of expert and impartial judges.<sup>101</sup> The aim was to establish a centralized court that would compel the council to implement the court's decisions.<sup>102</sup> However, as we will observe, both the PCIJ and its successor, the ICJ, fell short of realizing this vision.

The ICJ was established in June 1945 by the UN Charter and began its operations in April 1946. Article 92 of the UN Charter recognizes the ICJ as “the principal judicial organ of the United Nations”.<sup>103</sup> Where its duties will be governed by the ICJ Statute, which is annexed to the Charter.<sup>104</sup> The Court has a dual purpose: to settle international disputes submitted by states in accordance with international

law, and to provide advisory opinions on legal issues referred to it by authorized UN organs and specialized agencies, such as the Security Council, the General Assembly, and other UN bodies.<sup>105</sup>

According to Higgins, the ICJ played a central role in resolving international law disputes before 1966.<sup>106</sup> Since its establishment, the Court has issued more than 110 decisions on a wide range of issues, including land frontiers, maritime boundaries, territorial sovereignty, the non-use of force, diplomatic relations, the right to asylum, rights of passage, and economic and social rights.<sup>107</sup> During this period, the ICJ has also provided 27 advisory opinions on matters such as the compliance with international law of Kosovo's unilateral declaration of independence, the legal consequences of constructing a wall in occupied Palestinian territory, and compensation for injuries sustained while serving the United Nations.<sup>108</sup>

Judge Peter Tomka, the former president of the ICJ, emphasized the Court's crucial role in upholding and promoting the rule of law, he emphasises “the Court—through its activities—is an important agent for upholding and promoting the rule of law at the international level, in relations between States” and has the important and “noble role of determining existing law and rendering justice between States”.<sup>109</sup> The ICJ has also demonstrated a progressive approach in dealing with new cas-

2023].

97 General Statistics, *Permanent Court of International Justice*, World Courts Database, <[www.worldcourts.com/pcij/en/statistics.htm](http://www.worldcourts.com/pcij/en/statistics.htm)> [Last accessed: 12.09.2023]. See O'Connell, & VanderZee (n 85) 55.

See also ICJ, *Permanent Court of International Justice* <<https://www.icj-cij.org/pcij#:~:text=The%20establishment%20of%20the%20Permanent,and%20was%20dis-solved%20in%201946>> [Last accessed: 12.09.2023].

98 Allain, J. A. (2000). *Century of International Adjudication: The Rule of Law and Its Limits* (The Hague Netherlands: T.M.C. Asser Press) pp. 44-5, cited in O'Connell and VanderZee (n 85) at 56.

99 O'Connell, & VanderZee (n 85) 56.

100 Kelsen, H. *Law and Peace in International Relations* (first published 1942, Buffalo, NY: William S. Hein & Co., Inc. 1997) 151-2. See O'Connell and VanderZee, (n 85) at 56.

101 O'Connell and VanderZee (n 85) 57.

102 *Ibid.*

103 The UN mentions the ICJ in Article 7, paragraph 1, Article 36, paragraph 3, and Articles 92-96 of the UN Charter.

104 See art. 92 of the UN Charter. See Arts 34-38 of the ICJ Statute.

105 See UN Charter, Art. 92-96 of the UN Charter. See also UN, *The Court*, <<https://www.icj-cij.org/court#:~:text=The%20Court's%20role%20is%20to,Nations%20organs%20and%20specialized%20agencies>> [Last accessed: 12.09.2023].

106 See Higgins (n 81). Since its inception, according to Judge Stephen Schwebel, ICJ has been “busier than ever before”. See Alford (n 89) at 160.

107 Between 22 May, 1947 and 4 July, 2023, 190 cases were entered in the General List of the ICJ. See ICJ. *Cases*, <<https://www.icj-cij.org/cases#:~:text=Between%2022%20May%201947%20and,entered%20in%20the%20General%20List>> [accessed 12 July 2023]. See also a list of multilateral conventions that were referred to by the ICJ, <<https://www.icj-cij.org/treaties>> [Last accessed: 01.10.2023].

108 Philippe Couvreur (Registrar of the International Court of Justice), *Upholding the Rule of Law at the International Level: The Role of the International Court of Justice*, December 2012, No. 4 Vol. XLIX, *Delivering Justice*, <<https://www.un.org/en/chronicle/article/upholding-rule-law-international-level-role-international-court-justice>> [Last accessed: 1.09.2023].

109 *Ibid.*

es and developing international law. For instance, in the 1970 Barcelona Traction case (*Belgium v. Spain*),<sup>110</sup> the Court introduced the concept of *erga omnes* obligations,<sup>111</sup> which are obligations applying to the international community as a whole. The Court explicitly referred to “the principles and rules pertaining to the fundamental rights of the human person” in defining these obligations.<sup>112</sup> Similarly, in its 1995 Case Concerning East Timor (*Portugal v. Australia*), the ICJ recognized the right to self-determination as an *erga omnes* obligation.<sup>113</sup>

Therefore, the ICJ plays a significant role in shaping the evolution of international law. While courts typically apply the law rather than actively contribute to its development, Higgins argues that the ICJ’s activities in interpreting legal instruments and applying international law to new situations, as shown above, and as per Article 38 of the ICJ’s Statute, contribute to the development of legal principles.<sup>114</sup> In support of her argument, Higgins highlights the case of *Qatar v. Bahrain*,<sup>115</sup> where a question arose regarding the appropriation of low-tide elevations by the coastal State in the context of delimitation.<sup>116</sup> Given the absence of a clear answer in the UNCLOS texts, the Court, considering the policy implications, ultimately ruled that low-tide elevations could not be appropriated.<sup>117</sup> This ruling exemplifies the Court’s influence in shaping the direction of international law.

Kelsen further argues that compulsory jurisdiction is the fundamental component of a legal system, playing a crucial role in preventing the escalation of conflicts between states.<sup>118</sup> However, the ICJ does not currently have compulsory jurisdiction. Article 36, paragraph 2 of the ICJ Statute states that States parties to the Statute of the Court may “at any time declare that they recognize as obligatory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court”.<sup>119</sup> Currently, only 74 of the UN’s 193 member states have acknowledged the Court’s compulsory jurisdiction.<sup>120</sup> O’Connell and VanderZee contend that the United States withdrew from the court’s optional compulsory jurisdiction as soon as it became aware that Nicaragua intended to submit a case with the ICJ.<sup>121</sup> Nicaragua’s use of the ICJ as a “political tool” was cited as justification for the United States’ withdrawal from the court.<sup>122</sup>

Despite its non-binding jurisdiction and lack of enforcement mechanisms to ensure compliance, states often comply with ICJ rulings out of “fear of losing their reputation for noncompliance”.<sup>123</sup> In addition, states are increasingly turning to the courts to settle interstate disputes peacefully. As emphasised by Mr. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and the United Nations Legal Counsel:

*“More and more States are having recourse to the Court, since it offers convenient and effective means for the peaceful resolution of their differences. Its unique mandate, which comprises all cases which the Parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force, coupled with its universal character, as well as the authoritative value of its decisions and consent-based nature of its jurisdiction, make the Court the preferred*

110 *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*; Second Phase, International Court of Justice (ICJ), 5 February 1970.

111 Jorgenson, N. *The Responsibility of States for International Crimes* (Oxford: Oxford University Press, 2000) 94, cited in Armstrong, D. (2011). Evolving conceptions of justice in international law. *Review of International Studies*, 37(5), 2127.

112 *Ibid.*

113 Okawa, P. Issues of admissibility and the law on international responsibility, in Malcolm D. Evans (ed.) *International Law* (Oxford: Oxford University Press, 2006) 497, cited in ARMSTRONG, David. (2011). Evolving conceptions of justice in international law. *Review of International Studies*, 37(5), 2127.

114 See Higgins (n 81) at 16.

115 Maritime Delimitation and Territorial Questions between Qatar and Bahrain, *Qatar v Bahrain*, [1994]. ICJ Rep 112, ICGJ 81 (ICJ 1994), 1st July 1994, United Nations [UN]; International Court of Justice [ICJ].

116 For more information on the case, see Mendelson, M. (2001). The Curious Case of *Qatar v. Bahrain* in the International Court of Justice, *British Yearbook of International Law*, Volume 72, Issue 1, Pages 183-211.

117 See Higgins (n 81).

118 See O’Connell and Vanderezee (n 85) at 57.

119 Statute of the International Court of Justice, 18th April 1946 (33 UNTS 993, UKTS 67 (1946) Cmd 7015, 3 Bevans 1179, 59 Stat 1055, 145 BSP 832, TS No 993), OXIO 95.

120 See ICJ, “Declarations recognizing the jurisdiction of the Court as compulsory” <<https://www.icj-cij.org/declarations>> [Last accessed: 13.09.2023].

121 See O’Connell and Vanderezee (n 85) at 59. See A Chayes, “Nicaragua, the United States and the World Court” (1985) *Columbia Law Review*, Rev. 1445.

122 See O’Connell and Vanderezee (n 85) at 59.

123 See Alford (n 89) at 163.

*mechanism for the adjudication of legal disputes between States.*<sup>124</sup>

However, similar to the UNSC, the ICJ faces a number of challenges, including compromised legitimacy and impartiality, non-compulsory jurisdiction<sup>125</sup> and an increasing caseload.<sup>126</sup> It has encountered difficulties in resolving significant ongoing issues such as human trafficking, environmental protection, and conflicts occurring in many parts of the world, which raises concerns about its effectiveness. The structural bases of institutional autonomy has also been called into question, with a study suggesting that “judges are consciously biased”.<sup>127</sup> To establish the ICJ as an effective mechanism for promoting international norm compliance and resolving international disputes,<sup>128</sup> it is crucial for stakeholders to review the Statute of the ICJ and the institutional framework of the court to uphold the rule of law at the international level.<sup>129</sup> Additionally, it is imperative for states to cooperate with the ICJ and accept the optional clause to compulsory judications to the ICJ, to ensure full compliance with its rulings to enhance its effectiveness.

As observed in various international courts, including the WTO,<sup>130</sup> the European Court of Human

Rights (EctHR), and the European Court of Justice (ECJ), as well as other specialized and regional international courts, they all possess compulsory jurisdiction in certain subject matters or regions, and their decisions are binding on the parties involved.<sup>131</sup>

## 4. THE INTERNATIONAL LAW COMMISSION AND THE CODIFICATION AND DEVELOPMENT OF INTERNATIONAL LAW

Throughout its deliberations, the United Nations General Assembly (UNGA) has made significant advances in codifying and developing numerous aspects of customary international law by means of international treaties and conventions.<sup>132</sup> Subsidiary bodies created by UNGA resolutions consider particular areas of international law and report to the plenary.<sup>133</sup> The International Law Commission (ILC) is one of the most important bodies created by the UNGA resolution in 1947 with the mission to “promotion of the progressive development of international law and codification”.<sup>134</sup> Article 15 of the ILC Statute provides a definition of the terms “progressive development” and “codification of international law”. Progressive development is defined as “the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States”.<sup>135</sup> Whereas codification of international law, is the more “precise formulation and systematization of rules of international law

124 Cited in Swiss Federal Department of Foreign Affairs, Handbook on accepting the jurisdiction of the International Court of Justice Model clauses and templates, (New York, July 2014) 4. <[https://legal.un.org/avl/pdf/rs/other\\_resources/Manual%20sobre%20la%20aceptacion%20jurisdiccion%20CIJ-ingles.pdf](https://legal.un.org/avl/pdf/rs/other_resources/Manual%20sobre%20la%20aceptacion%20jurisdiccion%20CIJ-ingles.pdf)> [Last accessed: 12.09.2023].

125 See Giorgetti, C. *The Challenge and Recusal of Judges of the International Court of Justice*, in Challenges and Recusals of Judges and Arbitrators in International Courts and Tribunals 3 (Chiara Giorgetti ed., 2015). See also Ogbodo, S. Gozie (2012) “An Overview of the Challenges Facing the International Court of Justice in the 21st Century”, *Annual Survey of International & Comparative Law*. Vol. 18: Iss. 1, Article 7, Bahiru B.A. (2022). Challenges of Dispute Settlement through International Court of Justice (ICJ): the Case of Ukraine v. Russian Federation the Decision on Provisional Measures on Alleged Violation of Genocide Convention. *European Scientific Journal*, 18 (29).

126 See Ogbodo (n 125) at 4.

127 Bahiru, B.A. (2022). Challenges of Dispute Settlement through International Court of Justice (ICJ): the Case of Ukraine v. Russian Federation the Decision on Provisional Measures on Alleged Violation of Genocide Convention. *European Scientific Journal*, ESJ, 18 (29), 66.

128 See Ogbodo (n 125) at 17.

129 *Ibid.*

130 See RZ Lawrence, *The United States and the WTO Dispute*

*Settlement System*, Council on Foreign Relations CSR No. 25, March 2007, <[www.cfr.org/content/publications/attachments/Wto\\_CSR25.pdf](http://www.cfr.org/content/publications/attachments/Wto_CSR25.pdf)> cited in O’Connell and VanderZee (n 85) at 59.

131 See O’Connell and VanderZee (n 85) at 60.

132 Anderson, DH. (1998). Law-Making Processes in the UN System: Some Impressions. 2 *Max Planck Yearbook of United Nations Law*, 23.

133 UN, Research Guide, <<https://libraryresources.unog.ch/legal>>

134 UNGA Res 74 (II) 21 NN 1947.

135 UNGA, Statute of the International Law Commission, adopted by the General Assembly in resolution 174 (II) of 21 November, 1947, as amended by resolutions 485 (V) of 12 December, 1950, 984 (X) of 3 December, 1955, 985 (X) of 3 December, 1955 and 36/39 of 18 November, 1981.



in fields where there already has been extensive State practice, precedent and doctrine”.<sup>136</sup>

As such as part of its mandate, the ILC addresses a wide range of legal topics and issues of international significance. Some of the topics the ILC addresses are chosen by the Commission, while others are referred to it by the UNGA.<sup>137</sup> Usually, when the Commission completes its work on a topic, the UNGA frequently convenes a conference to incorporate its draft articles into a treaty or convention. The convention is then open for signatures by UN member States and when adopted most of these conventions form important bases of law that govern state relations.<sup>138</sup> The ILC also frequently consults with other important organisations such as the International Committee of the Red Cross (IRC) and other UN specialized agencies.<sup>139</sup>

Since its establishment in 1949, the ILC has produced a significant volume of draft articles, guidelines, and studies,<sup>140</sup> that serve as a foundation of the international legal framework. According to Bordin, the ILC has undertaken notable initiatives, including the creation of draft articles that formed the basis for four law of the sea conventions and a protocol resulting from the first United Nations Conference on the Law of the Sea, which took place in Geneva from February 24 to April 27, 1958.<sup>141</sup> The

ILC has also presented draft articles that were subsequently adopted as the Vienna Conventions on Diplomatic and Consular Relations in 1961 and 1963.<sup>142</sup> Furthermore, the Commission’s draft articles have served as a foundation for the 1969 Vienna Convention on the Law of Treaties (VCLT) and the Articles on State Responsibility for Internationally Wrongful Acts, which received recognition from the UNGA in 2001.<sup>143</sup> Additionally, the Commission has made significant contributions to the codification and progressive development of various other fields of international law, including international criminal law,<sup>144</sup> jurisdictional immunities of states,<sup>145</sup> and diplomatic protection.<sup>146</sup>

As stated in many studies, the ILC has faced substantial criticism.<sup>147</sup> Particularly due to the Commission’s composition, working and its sometimes problematic relationship with the Sixth Committee of the UNGA.<sup>148</sup> Despite encountering numerous challenges, the ILC has played a pivotal role in

136 *Ibid.*

137 See UN (n 133).

138 *Ibid.*

139 UN. International Law and Justice <<https://www.un.org/en/global-issues/international-law-and-justice>>

140 Bordin, F. L. (2014). Reflections of Customary International Law: The Authority of Codification Conventions and ILC Draft Articles in International Law. *The International and Comparative Law Quarterly*, 63(3), 539.

141 See for example, ILC, Convention on the Continental Shelf, 29 April 1958, United Nations, Treaty Series, vol. 499, p. 311). The Conference was convened pursuant to resolution 1105 (XI) adopted the four Conventions and the Optional Protocol. Namely: Convention on the Territorial Sea and the Contiguous Zone, Geneva, 29 April 1958, United Nations, Treaty Series, vol. 516, p. 205; Convention on the High Seas, Geneva, 29 April, 1958, United Nations, Treaty Series, vol. 450, p. 11; The Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas, Geneva, April 29, 1958, United Nations, Treaty Series, vol. 559, p. 285; Convention on the Continental Shelf, Geneva, 29 April, 1958, United Nations, Treaty Series, vol. 499, p. 311; And Optional Protocol of Signature concerning the Compulsory Settlement of Disputes, Geneva, 29 April, 1958, United Nations, Treaty Series, vol. 450, p. 169. See also Tullio Treves, Judge of the International Tribunal for the Law of the Sea, 1958

Geneva Conventions on the Law of the Sea, Geneva, 29 April, 1958, <<https://legal.un.org/avl/ha/gclos/gclos.html#:~:text=Four%20separate%20conventions%20were%20adopted,to%20become%20party%3A%20the%20Convention>> [Last accessed: 02.07.2023].

142 See, for example, UN, Vienna Convention on Consular Relations, 24 April, 1963, 596 UNTS 261, 21 UST 77, TIAS 6820. Vienna Convention on Diplomatic Relations, 18 April, 1961, 500 UNTS 95, 23 UST 3227, 55 AJIL 1064 (1961). For more information on these treaties see G. E. do Nascimento e Silva. (1964). The Vienna Conference on Consular Relations. *The International and Comparative Law Quarterly*, 13(4), 1214–1254; Epps, V. (2004). Violations of the Vienna Convention on Consular Relations: Time for Remedies. *Willamette Journal of International Law and Dispute Resolution*, 11(1), 1–37. Langhorne, R. (1992). The Regulation of Diplomatic Practice: The Beginnings to the Vienna Convention on Diplomatic Relations, 1961. *Review of International Studies*, 18(1), 3–17. Higgins, R. (1985). The Abuse of Diplomatic Privileges and Immunities: Recent United Kingdom Experience. *The American Journal of International Law*, 79(3), 641–651.

143 See Bordin (n 155).

144 See, for example, the Draft Statute for an International Criminal Court in ILC Yearbook 1994, vol II, pt 2, at 9 Iff. On the topic, see O’Keefe, R. (2007). The ILC’s Contribution to International Criminal Law, 49, *German Yearbook of International Law*, 201, cited in Bordin (n 155).

145 See the 1991 Draft articles on jurisdictional immunities of States and their property, ILC Yearbook 1991, vol II, pt 2, at 28f.

146 Draft Articles on Diplomatic Protection, ILC Yearbook 2006, vol II, pt 2, at 24, ch IV.

147 See Bordin (n 155). See, for example, Higgins (n 81) at 2.

148 *Ibid.*

shaping the landscape of international law.<sup>149</sup> The Commission has achieved success in the adoption of many treaties by the UNGA, as highlighted by Higgins.<sup>150</sup> However, such instances are infrequent, and not all of the Commission's work has influenced the adoption of treaties or conventions.<sup>151</sup> According to Bordin, "in its early stages, the ambition of the so-called 'codification movement' was to produce conventions that would be eventually ratified by all States thus replacing customary international law with binding codes".<sup>152</sup> Since its establishment, there has been a strong preference among the members of the ILC and states for convening diplomatic conferences "to consider and adopt sets of draft articles in treaty form".<sup>153</sup> This preference aligns with Article 23 of the ILC Statute.<sup>154</sup> Nevertheless, the shortcomings of treaties as a means of international legislation became evident early on.<sup>155</sup> For example, Bordin argues even the "most celebrated codification conventions" fell short of achieving universal adherence.<sup>156</sup> For instance, the VCLT,<sup>157</sup> often regarded as the pinnacle

of the "codification movement",<sup>158</sup> took more than a decade to enter into force and, to this day, has not achieved universal ratification.<sup>159</sup>

As interest for the adoption of codification conventions began to wane, the notion that the results of the ILC's work should take the form of non-binding "restatements" began to resurface.<sup>160</sup> Early commentators held this view, believing that attempts to codify through treaties could be problematic due to the inherent limitations of treaties as a source of general international law and their potential impact on customary law.<sup>161</sup> Higgins argues that a portion of the Commission's work has been neglected or has "disappeared".<sup>162</sup> In some instances, negative responses from UN Member States prevented ILC reports from being presented to the UNGA as proposed articles or recommendations for international conferences to adopt as treaties or conventions.<sup>163</sup>

According to Bordin, "ILC members appear to be conscious of the risks involved in the adoption of unsuccessful conventions, and States no longer appear to be interested in convening conferences to discuss matters of general international law".<sup>164</sup> In recent ILC practices, alternative options outlined in Article 23 of the ILC Statute, specifically the recommendation that the UNGA "take note of or adopt the report [of the Commission]. by resolution," have acquired favour.<sup>165</sup> In 1999, when the Articles on Nationality of Natural Persons in Relation to the Succession of States<sup>166</sup> were adopted,

149 *Ibid.*, at (n 155).

150 See Higgins (n 81) at 1. The effectiveness of the Commission's efforts can be observed through the support it has garnered from numerous states, exemplified by the significant number of ratifications for the 1961 and 1963 Conventions on diplomatic and consular relations, which currently stand at over 187 and 173, respectively. See Bordin (n 155).

151 See Bordin (n 155) at 539.

152 *Ibid.*

153 *Ibid.*

154 Statute of the International Law Commission, adopted by the General Assembly in resolution 174 (II) of 21 November 1947, as amended by resolutions 485 (V) of 12 December 1950, 984 (X) of 3 December 1955, 985 (X) of 3 December 1955 and 36/39 of 18 November 1981.

155 See e.g. K. Zemanek, 'Codification of International Law: Salvation or Dead End?' in *International Law at the Time of its Codification: Essays in Honour of Roberto Ago* (A Giuffrè 1987) Bordin, F. L. (2014). *Reflections of Customary International Law: The Authority of Codification Conventions and ILC Draft Articles in International Law. The International and Comparative Law Quarterly*, 63(3) at 540.

156 See Bordin (n 155) at 140.

157 The VCLT was adopted on May 22, 1969, with a vote of 79 in favour, 1 against, and 19 abstentions. See United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331. See also Friedmann, W. (1970). *The United Nations and the Development of International Law. International Journal*, 25(2), 275.

158 See Bordin (n 155) at 140. See also Friedmann, W. (1970). *The United Nations and the Development of International Law. International Journal*, 25(2), 275.

159 See Bordin (n 155) at 540.

160 *Ibid.*

161 *Ibid.*, at 541.

162 See Higgins (n 81) at 1.

163 See ILC Articles on Responsibility of States for Internationally Wrongful Acts 2001 Text adopted by the Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft articles, appears in the Yearbook of the International Law Commission, 2001, vol. II (Part Two). The text reproduced as it appears in the annex to General Assembly resolution 56/83 of 12 December 2001, and corrected by document A/56/49(Vol. I)/Corr.4. cited in See Higgins (n 81) at 2.

164 See Bordin (n 155) at 541.

165 *Ibid.*

166 Text adopted by the International Law Commission at its fifty-first session, in 1999, and submitted to the General

this shift in perspective became evident. The ILC suggested adopting the proposed draft article as a declaration, and the UNGA decided to “take note of or adopt the report [of the Commission]. by resolution”.<sup>167</sup>

As per Friedman’s analysis, the process of concluding multilateral conventions for law-making encounters substantive and procedural challenges.<sup>168</sup> However, the accomplishments of the UN and, specifically, the ILC should not be overlooked.<sup>169</sup> By the end of 1969, six multilateral conventions were successfully concluded under the auspices of the United Nations, based on draft articles submitted by the ILC commission.<sup>170</sup> Therefore, despite the obstacles they face, it seems that the ILC will persist in its efforts to promote the codification and progressive development of international law.<sup>171</sup> However, the support of states and the UNGA is crucial to accomplish the main goals of the Commission.

## 5. THE ROLE OF THE UN GENERAL ASSEMBLY IN THE DEVELOPMENT OF CUSTOMARY INTERNATIONAL LAW

International organisations have not gone so far as to create customary international law, but through their resolutions and declarations, they have altered the past formation of customary international law.<sup>172</sup> Since 1945, the UN has grown dramatically, and the UN General Assembly (UNGA) has emerged as a forum for international dialogue

for all 193 member states and as a vital organ of the UN has influenced the development customary international law.<sup>173</sup>

Article 38 of the ICJ Statute does not include UNGA resolutions as one of the traditional sources of international law, in fact, the drafters of the Statute rejected a proposal that “the Assembly be vested with legislative authority to enact rules of international law”.<sup>174</sup> However, UNGA resolutions, although non-binding on member states, have had an impact on the development of international law. These resolutions have often led to international treaty-making conferences on specific issues and have influenced the evolution of international norms.<sup>175</sup> They represent the collective stance of the international community on normative issues and can have a legitimizing or delegitimizing effect on state actions.<sup>176</sup> They can also contribute to adjustments in state behaviour by shaping state practice and influencing the development of customary international law.<sup>177</sup>

UNGA resolutions provide international legal norms and principles that cover a wide variety of subjects such as women’s rights,<sup>178</sup> the right to be free from torture,<sup>179</sup> the right of all people to self-determination,<sup>180</sup> the rights and duties of nations who expropriate foreign-owned assets<sup>181</sup> and

Assembly as a part of the Commission’s report covering the work of that session (at para. 48). The report, which also contains commentaries on the draft articles, appears in Yearbook of the International Law Commission, 1999, vol. II, Part Two.

167 See Bordin (n 155) at 541.

168 Friedmann, W. (1970). The United Nations and the Development of International Law. *International Journal*, 25(2), 275.

169 *Ibid.*

170 *Ibid.*, four of these treaties were concerned with different aspects of the “Law of The Sea”. The other two treaties deal with the law of diplomatic and consular relations.

171 For more information on the ILC’s past and present activities, see ILC <<https://legal.un.org/ilc/>> [last access: 02.09.2023].

172 Zheng, Y. (2022). Analysis on the Impact of International Organizations on International Law. In *2022 8<sup>th</sup> International Conference on Humanities and Social Science Research (ICHSSR)* 1718 Atlantis Press.]

173 Kerwin, G. J. (1983). The Role of United Nations General Assembly Resolutions in Determining Principles of International Law in United States Courts. *Duke Law Journal*, 4, 879.

174 The Philippines proposed such a role for the General Assembly at the San Francisco Conference in 1945, but the parties to the conference voted it down by an overwhelming margin, granting the Assembly only the power to recommend and advise, see UN Charter, art. 10-14. Cited in Kerwin (n 173) at 879.

175 Panke, D., Lang, S. & Wiedemann, A. (2019). Regional organisations in the UNGA: Who is most active and why? *Journal of International Relations and Development*, 22, 745.

176 *Ibid.*

177 *Ibid.*

178 See, for example, Declaration on Elimination of Discrimination Against Women, G.A. Res. 2263, 22 U.N. GAOR Supp. (No. 16) at 35, U.N. Doc. A/6716 (1967).

179 See, for example, UN, Universal Declaration of Human Rights, GA. Res. 217, 3 U.N. GAOR, U.N. Doc. A/777 (1948).

180 See, for example, Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, 15 U.N. GAOR Supp. (No. 16) at 66, U.N. Doc. A/4684 (1960).

181 See for Declaration on the Establishment of a New International Economic Order, GA. Res. 3201, Sixth Spec.

other important issues.<sup>182</sup> Resolutions thus address many new and sensitive areas in which customary international law, treaties, and other formal sources provide limited guidance.<sup>183</sup>

As such UNGA can play a crucial role in the formulation and identification of international customary law.<sup>184</sup> Although not legislative in nature, according to Alvarez, UNGA resolutions “provide evidence of existing or emerging new law and may sometimes have normative value”.<sup>185</sup> They offer evidence of existing and new customary rules, for example, UNGA resolutions may be used as a premise for validating the conduct of states, and they are crucial for “measuring state practice and developing customary international law when conflicts arise over issues of customary rules”.<sup>186</sup> State recognition of a new customary rule can be strengthened through UNGA resolutions.<sup>187</sup> Furthermore, under certain circumstances, a resolution can acquire customary status if it meets certain criteria, receives the support of a majority of states, and contains normative elements. This has been exemplified in the context of international human rights standards.<sup>188</sup> Throughout its activities, the UNGA has endorsed a diverse array of international human rights treaties and conventions.

Additionally, UNGA resolutions aim to foster a consensus among states, encouraging them to adopt a unified position and exert international influence or initiate action.<sup>189</sup> For example, the UDHR as stated above and the Stockholm Declara-

tion (1972) provide international norms and standards that have acquired widespread support in state practice and are regarded by states as legally binding, allowing them to be incorporated “into the framework of customary international law”.<sup>190</sup>

There are, however arguments that UNGA resolutions are too “unreliable” to be regarded as authoritative sources.<sup>191</sup> It appears to be a political organisation endowed with the advantages of open discussions on political issues. In addition, as mentioned above, UNGA resolutions are non-binding. In fact, it is submitted that if member nations knew their votes would be binding, many resolutions would never be adopted.<sup>192</sup> Overall, according to Kerwin, the principles of customary international law are dependent on the variables of state practice and the international community’s acceptance of a given principle as law. Accordingly, UNGA resolutions can play a role in influencing customary practices, if they are supported by a majority of member states.<sup>193</sup>

## CONCLUSION

In conclusion, international organisations, particularly intergovernmental organisations like the UN, play a crucial role in the development and codification of international law. They are essential in formulating and promoting international treaties and conventions, shaping global norms and standards, and addressing global challenges.<sup>194</sup>

Since the mid-20th century, the number of international organisations has significantly increased, reflecting the growing recognition of the need for global cooperation.<sup>195</sup> These organisations, whether global entities like the UN or regional organisations, such as the League of Arab States, serve as important platforms for addressing emerging challenges to peace, security, and socio-econom-

Sess. U.N. GAOR Supp. (No. 1) at 3, U.N. Doc. A/9559 (1974).

182 See, for example, Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970); Declaration on the Prohibition of the Use of Nuclear and Thermo-nuclear weapons, G.A. Res. 1653, 16 U.N. GAOR Supp. (No. 17) at 4, U.N. Doc. A/5100, (1961).

183 See Kerwin (n 173) at 879.

184 See Zheng (n 172) at 1718. See also Alvarez, (n 55) at 275.

185 *Ibid.*, at Zheng, 1718.

186 Alvarez, J. (2017). *The Impact of International Organizations on International Law*. Leiden, 479. Cited in Zheng (n 172) at 1718.

187 Zagel, GM. (2018). *International Organisations and Human Rights: The Role of the UN Covenants in Overcoming the Accountability Gap*. *Nordic Journal of Human Rights*, 74-90., cited in Zheng (n 172).

188 *Ibid.*

189 See Zheng (n 172) at 1718.]

190 *Ibid.*]

191 Kerwin (n 173) at 89.

192 *Ibid.*

193 *Ibid.*

194 See Kolb, R. (2022). *Théorie du droit international*, Bruxelles, Bruylant, 208. See also Alvarez (n 39) at 326.

195 See, for example, Grant, J. P. (2010) *Subjects of International Law* cited in *International Law Essentials*, Edinburgh University Press, 35.



ic development. They also facilitate cooperation among states and oversee the behaviour of various entities, contributing to the maintenance of international order.<sup>196</sup>

International organisations can exhibit different degrees of institutionalisation and legal authority; however, their common objective is to establish a rules-based international system and ensure global participation.<sup>197</sup> They recognize the social nature of humanity and uphold the rights of individuals as subjects of international law.<sup>198</sup> The UN has adopted numerous human rights treaties to establish international standards and hold states accountable for their obligations.

As discussed in this paper, the ICJ has contributed to the development and interpretations of international law by adjudicating disputes between states and providing authoritative interpretations of international legal principles. However, the ICJ encounters various challenges, including limitations on its jurisdiction and the absence of effective enforcement mechanisms for its rulings. Despite the expectation that states will adhere to the court's decisions, there are no mechanisms in place to ensure state compliance with ICJ rulings.

As this paper highlights, the UN encounters inherent challenges and institutional deficiencies that necessitate acknowledgement. Member states of the UN need to acknowledge these shortcomings and proactively improve the effectiveness of

the UN. Key areas for reform encompass strengthening the decision-making authority of the UNGA, increased acceptance of ICJ compulsory jurisdiction and establishing a compliance-making mechanism to oversee implementation of ICJ rulings, enhancing the UNGA's relationship with UNSC, ensuring equitable representation of states within the UNSC. These reforms aim to rectify existing deficiencies and foster a more inclusive and efficient UN system.

Overall, it is argued that the effective implementation of international law is contingent upon the political will of states. The UN recognizes in Article 2(2) that it is founded on the principle of "the sovereign equality of its members". Sovereignty has consistently maintained its position as a fundamental aspect of international law and inter-state relations.<sup>199</sup> Consequently, enforcing international rules on states proves challenging, as recent events have illustrated, with the UNSC often experiencing stagnation and encounters challenges in achieving effectiveness even in cases involving humanitarian concerns. The political will of states is crucial in determining the UN's ability to reform and effectively ensure the implementation of international law.

As such, it is imperative for the UN to enhance its purpose and effectiveness. This requires the active engagement and commitment of all stakeholders within the UN and member states. By collectively working towards these goals, the UN can strengthen its overall effectiveness, significance and contribute to the achievement of a more just and peaceful world.

196 See, for example, Fomerand, J. *Evolution of International Organization as Institutional Forms and Historical Processes Since 1945: "Quis Custodiet ipsos custodiet?"*. Oxford Research Encyclopedia of International Studies. 2

197 See Alvarez (n 46) at 326.

198 See Lauterpacht, H. (1946). *The Grotian Tradition in International Law*, *The British Yearbook of International Law*, 19-51. See Alvarez, (n 46) at 326.

199 Loewenstein, K. (1954). *Sovereignty and International Cooperation*. *The American Journal of International Law*, 48 (2), 222.

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